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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/523,408

02/03/2005

Roberto Trebbi

023349-00301

6298

4372 7590 02/27/2008  
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EXAMINER

PARADISO, JOHN ROGER

ART UNIT

PAPER NUMBER

3721

NOTIFICATION DATE

DELIVERY MODE

02/27/2008

ELECTRONIC

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

DCIPDocket@arentfox.com  
IPMatters@arentfox.com  
Patent\_Mail@arentfox.com

<b>Office Action Summary</b>	<b>Application No.</b> 10/523,408	<b>Applicant(s)</b> TREBBI ET AL.	
	<b>Examiner</b> John R. Paradiso	<b>Art Unit</b> 3721	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 20 July 2007.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-4 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-4 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                     | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

## **DETAILED ACTION**

### ***Claim Rejections***

1. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

2. Claims 1-4 are rejected under 35 U.S.C. 103(a) as being unpatentable over in view of JOHNSTON ET AL (US 6357490), as set forth in paragraph 4 of the previous Office Action and reprinted below for convenience:

JOHNSTON ET AL discloses a capsule filling machine with a plurality of reciprocating doser means (78) mounted at regular intervals on a rotating carousel (62) (See JOHNSTON ET AL Fig. 6). The doser means are operative between a first position in which the doser picks up particulate matter and second position in which the doser transfers the particulate matter into capsules. The doser means are biased by means of springs (76). The capsules are then sealed and ejected into a hopper (110).

JOHNSTON ET AL does not disclose a second carousel or the intervals between doser means to be 120 degrees.

Regarding claim 1, it would have been obvious to one of ordinary skill in the art at the time the invention was made to add a second carousel under the first one in order to provide more opportunity and space for dosers and/or handling stations, since it has been held that mere duplication of the essential working parts of a device involves only routine skill in the art.

Regarding claim 3, JOHNSTON ET AL discloses the dosing means being placed at 72 degree intervals and it would have been obvious to one of ordinary skill in the art at the time the invention was made to make the intervals 120 degrees, or any desired interval, in order to produce the most efficient rotating mechanism, since it has been held that rearranging parts of an invention involves only routine skill in the art.

### ***Response to Arguments***

3. Applicant's arguments filed 7/20/2007 have been fully considered but they are not persuasive.

4. Applicant states on page 5 of his Response that "The Applicants respectfully submit that the powder material disclosed in Johnston is not comparable to the claimed micro-tablet and pellets, at least because the micro-tablets and pellets have dimensions which clearly distinguish them from the granular form of a powder material."

However, absent any specific dimensions for a micro-tablet or pellet, Examiner maintains their art-recognized equivalence with the powdered medicament of JOHNSTON ET AL, since they can both be dispensed in fluent form, assisted by suction, into capsules.

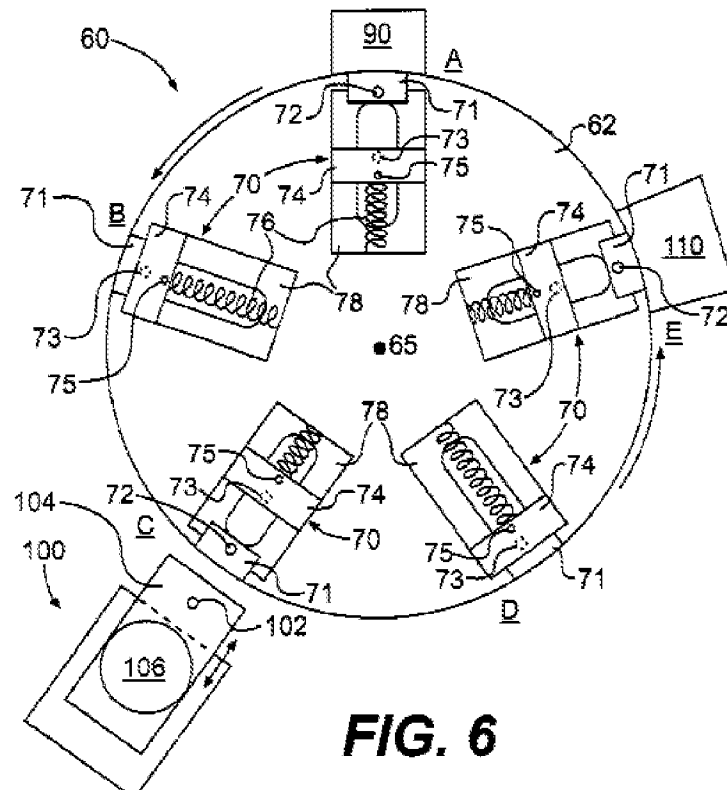
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5. Applicant states on page 5 of his Response that “Applicants respectfully submit that existing devices for dosing powder are designed to pick up, by suction, a granulate powder material but do not generate sufficient force to pick up micro-tablets ...”.

However, the suction of JOHNSTON ET AL does not “pick up” the powder, but rather assists its fluent movement into a container. Examiner also notes that micro-tablets and pellets may require increased suction pressure, but it is clearly not an impossibility, since even large items (such as the tube at the drive up window of many banks) can be picked up and moved by means of sufficient pneumatic force.

6. Applicant states on page 6 of his Response that “Moreover, Johnston fails to teach or suggest at least the feature of a hollow nozzle having a plurality of seats on a lateral surface thereof for picking up and holding the micro-tablets or pellets, and moving between a pick-up position and a release position and communicating with a pressurized pneumatic means...”.

However, these features are clearly shown in Fig. 6



The doser means are operative between a first position in which the doser picks up particulate matter and second position in which the doser transfers the particulate matter into capsules.

7. Applicant states on page 6 of his Response that “Thus, the hopper 19 in Johnston does not communicate with a pressurized pneumatic means.

However, Examiner notes that during patent examination of the claims, the pending claims must be given their broadest reasonable interpretation consistent with the specification. *Phillips v. AWH Corp.*,

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415 F.3d 1303, 75 USPQ2d 1321 (Fed. Cir. 2005). *See also* MPEP § 2111. Moreover, while the claims of issued patents are interpreted in light of the specification, prosecution history, prior art and other claims, *this is not the mode of claim interpretation to be applied during examination.*

During examination, the claims must be interpreted as broadly as their terms reasonably allow.

*In re Am. Acad. of Sci. Tech Ctr.*, 367 F.3d 1359, 1369, 70 USPQ2d 1827, 1834 (Fed. Cir. 2004).

*See also* MPEP § 2111.01.

Examiner maintains that the “pressurized pneumatic means” is being read on the suction device of JOHNSTON ET AL, which is ultimately connected to the hopper, where the material begins its movement.

### ***Conclusion***

8. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

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9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to John Paradiso. The examiner can normally be reached Monday-Friday, 9:30 p.m. – 6:00 p.m. (ET).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rinaldi Rada, can be reached at the number listed below.

Any inquiry of a general nature or relating to the status of this application should be directed to the 3700 Technology Center Receptionist.

/John Paradiso/

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Examiner John Paradiso: (703) 308-2825

February 14, 2008

Additional Phone Numbers:

Supervisor Rinaldi Rada: (571) 272-4467

Fax (Official): (571) 273-8300

Fax (Direct to Examiner) (571) 273-4466 (Drafts only)